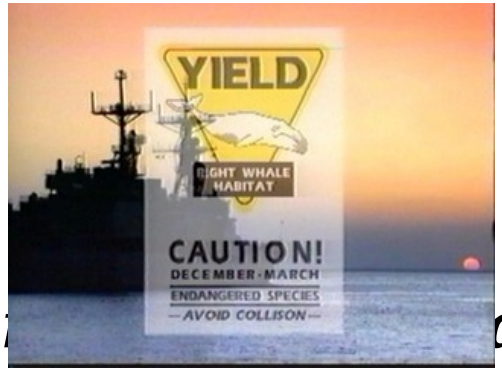
The Marine Mammal Initiative (MMI)

Navy ***Marine Mammals***



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Marine Mammal Issue

- The Marine Mammal Protection Act (MMPA) of 1972 prohibits US-flagged ships from “taking” marine mammals without a permit
- “Taking” = hunt, kill, harm, harass
- Actions that MAY result in a take
  - Explosives
  - Acoustic sources (sonars)
  - Engine noise/ship traffic
  - Overflights
- Applies in U.S. territory and on “high seas”

MMPA Challenges

- Harassment definition encompasses wide range of activities
  - Applied literally, would include benign, momentary

  disruptions of marine mammal beha[illegible] proscribing or

  regulating all Naval operations
  - Costly litigation exposure/uncertai[illegible]

  despite best efforts to comply

Marine Mammal Initiative

Strategy

- Sound Legal Position
- Knowledge Superiority
- Policy and Procedures
- Engage and Educate

Definition of "Level B Harassment"

- "**any act** of pursuit, torment, or annoyance which . . . has the **potential to disturb** . . . by causing disruption of behavioral patterns, including, but not limited to, migration,breathing, nursing, feeding, or sheltering." 16 U.S.C. § 1362(
- Definition difficult to interpret
- Regulators agree it is vague and confusing

Inconsistent Application by Regulators

- SEAWOLF Shock Test:
  - A simple, singular, reflex reaction (e.g., alert, startle, dive response) by marine mammals does not constitute harassment. (1998)

- WINSTON CHURCHILL Shock Test:
  - Navy's assessment fails to "appropriately reflect the definition of [harassment] . . . . Any behavioral disruption would technically constitute harassment." (March 30, 2000)

Litigation

- Low Frequency Active Sonar:
  - 6 year delay; $10 million Scientific Research Project.
  - 5 law suits so far
  - major law suit expected when EIS published
- John Paul Jones ship shock trial:
  - coordinated with regulators, sued by activists
  - lost case, settlement delayed test 30 days, $3 million dollars cost.
  - Ultimate location more densely populated with marine mammals.

Support for Amending the MMPA

- Change is advocated by National Research Council

  Report to Congress in March 2000:

  - if current interpretation of harassment applied to commercial shipping as strenuously as applied to Naval activities, "the result would be crippling."
  - prefer a science-based definition: Sustained, biologically significant disruption of critical behaviors

New Definition of Harassment

- Any act which
  - [Level A] injures or has the **significant** potential to injure
  - [Level B (1)] disturbs or is **likely to disturb** . . . by disrupting . . . migration, surfacing, nursing, breeding, feeding, or sheltering to a point where such behavioral patterns are **abandoned or significantly altered**; or
  - [Level B(2)] **directed** toward . . . marine mammals, that is **likely to disturb** a marine mammal or stock by disrupting behavior, including but not limited to migration, surfacing, nursing, breeding, feeding, or sheltering

Steaming Forward

- Approved by NMFS, NOAA, FWS, DoI, DoC, DoD, OMB, and NSC
- Marine Mammal Commission support
- Status
- Potential opposition
  - Activists
  - “Burden on marine mam
- Navy Response
  - Congressional Engagem